IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/02/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.R. SINGHARAVELU

C.M.A. No. 731 of 1996

M/s. Kedarnath Brijlal,
Madurai. .. Appellant/Applicant.

-Vs-

The Union of India,
owning Southern Railway,
represented by its General Manager,
Madras. .. Respondent/Respondent.

Appeal against the judgement and decree dated 31-1-19
95 and made in O.A.I/1091/92 on the file of Railway Claims Tribunal, Madras Bench.

Mr. T. Rajamohan:-For Appellant.

Mr. V.G. Sureshkumar:- For Respondent.

:JUDGEMENT

(Judgement of the Court was made by P. Sathasivam, J.,)

Applicant in O.A.I/1091/92 on the file of Railway Claims Tribunal, Madras Bench is the appellant in the above appeal. For convenience, we shall refer the case of the parties as arrayed before the Claims Tribunal. The applicant purchased and received a consignment of 140 bags of Gram from Baran to Madurai through the respondentSouthern Railway under Invoice No. 179 dated 5-2-92, RR No. 520549. According to him, at the time of taking delivery of the consignment at the destination station i.e., Madurai, all the bags were damaged by insects and weevil action, contents found with holes and powder pouring out from the holes, black insects flying. The Railway officials gave open delivery of all the bags and assessed the damages at 50 per cent i.e., 13,860 kgs and issued a joint survey report on 30-5-92. The value of the damage is Rs.49,342/-. According to the applicant, the damage to the consignment was only due to the gross negligence and misconduct on the part of the Railway administration and employees and also due to the defective wagon

and delay. Further, the consignment was booked under railway risk rate; hence the respondent is bound to recoup the loss sustained by the applicant. The applicant sent a claim notice as required under Section 106 on 13-6-92 to the Chief Commercial Superintendent, Tiruchirapalli claiming damage. The respondents sent a reply repudiating their claim on 30-6-92. Therefore, the applicant filed O.A.I/1091/92 for recovery of a sum of Rs.49,342/- with future interest and cost before the Railway Claims Tribunal. The said application was heard along with another O.A.I/1090/92 by the Tribunal. The Tribunal has found that the applicant has got title to the consignment. It also found that weevil action is due to inherent defect/vice of the goods at the time of loading. Finally, the Claims Tribunal concluded that the applicant is entitled for 60 per cent of the damage and directed the respondent/Railways to pay Rs.25,904/- with interest at 12 per cent per annum from the date of application till realisation with proportionate costs. Contending that having

found that the Railways have not used reasonable foresight and care, erred in attributing negligence on the part of the applicant, has filed the present appeal with reference to disallowed claim.

2. Heard Mr. T. Rajamohan, learned counsel for the appellant and Mr. V.G. Sureshkumar for the respondent.

3. The point for consideration in this appeal is, whether the applicant is entitled to the entire amount of Rs.49,342/- or to the extent of 60 per cent, as assessed by the Railway Claims Tribunal?

4. There is no dispute regarding title to the consignment and eligibility to file claim petition before the Railway Claims Tribunal. Now let us consider, whether the bags that were consigned, were damaged at the time of booking itself. In this regard, it is relevant to refer Section 98:-
"Section 98. Goods in defective condition or defectively packed.- (1) xx xx xx

(2) When any goods entrusted to a railway administration for carriage are found on arrival at the destination station to have been damaged or to have suffered deterioration, leakage or wastage, the railway administration shall not be responsible for the damage, deterioration, leakage or wastage of the goods on proof by railway administration,-

(a) that the goods were at the time of entrustment to the railway administration, in a defective condition, or were at that time either defectively packed or not packed in such manner as may be prescribed and as a result of which were liable to damage, deterioration, leakage or wastage; and

(b) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or any of its servants at the time of entrustment of the goods to the railway administration for carriage by railway:

Provided that the railway administration shall be responsible for any such

damage, deterioration, leakage or wastage if negligence or misconduct on the part of the railway administration or of any of its servants is proved."

The above provision makes it clear that the defective nature of the goods, if any, found at the time of booking shall be recorded by the consignor or his agent in the forwarding note and in the absence of such remarks either in the forwarding note or in the railway receipt, the presumption shall be that the goods did not suffer from any inherent defect at the time of booking. In the case on hand, the forwarding note has not been produced by the respondent and even the railway receipt (RR) i.e., Ex.B-1 did not contain any such adverse remarks. It is also relevant to mention that the liability of the respondent/ railways under Section 93 of the Railways Act is that a insurer and the respondent shall not be relieved of its responsibility for loss and damage unless the railway administration proves that it has used reasonable foresight and care in carriage of goods.

5. The applicant has also established that there had been a inordinate delay in transit of the consignment as against usual transit period of 15 days. It is pointed out that as against 15 days of normal transit, the transit has taken 105 days and hence the railways has not exercised reasonable care. As rightly argued by the learned counsel for the applicant, the railways have not lead any data to determine what will be the normal transit time against this theoretical transit time that is one day for every 250 k.m. of lead, nor they have produced any evidence to justify the transit. Accordingly, the Claims Tribunal has rightly found that the railways did not exercise reasonable foresight and care in the movement of the consignment in question.

6. The Claims Tribunal in spite of holding that there was inordinate delay and railways has not used reasonable foresight and care in carriage of goods, arrived at a conclusion that the weevil action is due to inherent defect/vice of the goods at the time of loading. Here again, there is a factual conclusion by the Tribunal that there is no evidence to indicate that the contents have not been damaged due to intrusion of water, etc., enroute in transit. We have already found that the forwarding note has not been produced by the respondent and the railway receipt-Ex.B-1 did not contain any adverse remark regarding the defective nature of the goods at the time of booking. In the light of the materials placed, finding by the Claims Tribunal, we are unable to sustain its conclusion that the damage was mainly due to inherent defect/vide of the goods at the time of loading. Having found that the railways shall not be relieved of its responsibility of loss and damage, no information regarding condition of the goods consigned in the forwarding note, inordinate delay in transit, we hold that the applicant is entitled to the value of the consignment as claimed. In other words, the entire liability for the damages should have been fastened on the railways. We have already held that Section 98 (1) (a) of the Act requires that the facts have to be recorded in the forwarding note that has not been done in this case. Transhipment records have also not been produced. Section 93 provides that even when there is an act or omission or negligence of the consignor or the consignee or the endorsee or the agent or servant of the consignor or the consignee or the endorsee and where there is natural deterioration or wastage in bulk or weight due to inherent defect, quality or vide of the goods, the railway

administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration, or non-delivery unless the railway administration further proves that it has used reasonable foresight and care in the carriage of the goods. The very finding of the Tribunal is that the railway administration has not proved that it had used reasonable foresight and care in carriage of the goods under Section 98 (1) (a) of the Act when any goods are entrusted to the railway administration for carriage, if the goods are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wastage or the goods are either defectively packed or not packed in such a manner as may be prescribed and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage, the Railway Administration had to ensure that the fact of such condition or defective or improper packing had been recorded by the consignor or his agent in the forwarding note to escape liability. As said earlier, admittedly, the forwarding note has not been produced by the railways. The railway receipt does not contain any such adverse remarks. The defect in the goods have not been noted in the railway receipt. There had been inordinate delay in transporting the goods. We are satisfied that the Claims Tribunal had assumed without any basis that there is inherent defect in the goods. We have already held that the provisions of the Act requires facts to be recorded in the forwarding note and the same has not been done.

7. Under these circumstances, we hold that the Railway Claims Tribunal was in error in apportioning the liability. It should have fastened the entire liability on the respondent railways. Similar view has been expressed by Sivasubramaniam, J., in C.M.A.No. 578 of 1992 on 20-9-1999; Murugesan, J., in C.M.A.No. 1275 of 1992 on 21-9-2000; and K. Sampath, J.,in (2001) I MLJ 462.

8. In the light of what is stated above, the order dated 31-1-95 passed by the Railway Claims Tribunal, Madras Bench in O.A.I/1091/92 is set aside and the respondent/Southern Railway is directed to pay the entire value of Rs.43,173.90 rounded off to Rs.43,174/- with interest at 12 per cent per annum from the date of application till the date of payment. The appeal is allowed. No costs.

R.B.
Index:- Yes
Internet:- Yes

To:-

1. The Railway Claims Tribunal, Madras Bench with records.

2. The Record Keeper, V.R Section, High Court, Madras.